

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of: )  
 )  
Price Cap Performance Review for ) CC Docket No. 94-1  
Local Exchange Carriers )

REPLY COMMENTS

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits its reply comments regarding revisions to the local exchange carrier ("LEC") price cap plan. As discussed herein, the record confirms the need to reform the plan to prevent unreasonable discrimination, and to reject LEC pleas for radically increased pricing flexibility.

I. THE PRIMARY GOAL OF PRICE CAP REFORM MUST BE TO PREVENT UNREASONABLE DISCRIMINATION IN THE ACCESS MARKET.

CompTel's opening comments explained that the Notice in this proceeding focuses on issues that relate primarily to the absolute level of access rates. The Notice is silent regarding a second set of issues that is critical to consumer welfare: those associated with discrimination in the access marketplace.<sup>1</sup> Consequently, CompTel urged the Commission to address discrimination-related issues and to proceed within an analytical framework that recognizes the following fundamental economic and technical realities:

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<sup>1</sup> CompTel at 1-2.

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- access is an intermediate good with highly concentrated demand;
- access competition is not significantly more prevalent now than it was when price cap regulation was adopted in 1990;
- the LECs already enjoy substantial pricing flexibility;
- the LECs will use whatever flexibility they are given to discriminate in favor of AT&T;
- there is no technical or economic basis for existing discriminatory transport rates;
- existing tandem switching rates include indefensible overhead loadings; and
- the threat of discrimination is not limited to transport and tandem switching.<sup>2</sup>

CompTel also showed that, by ignoring these realities, the current price cap rules promote inefficiency, diminish innovation, hamper economic growth, and restrain deployment of the National Information Infrastructure.<sup>3</sup> Accordingly, CompTel urged the Commission to modify the price cap plan in two respects:

- first, by requiring a permanent, cost-based relationship between DS3 and DS1 rates and requiring the LECs to derive tandem-switched transport rates based on DS1 and DS3 rates, taking into account each LEC's copper/fiber ratio; and
- second, by treating tandem switching as part of an overall switching basket and directing the LECs to develop a tandem switching rate based on costs

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<sup>2</sup> Id. at 3-8.

<sup>3</sup> Id. at 12-14.

identified using the model for ONA pricing in Docket No. 92-91.<sup>4</sup>

WilTel echoed CompTel's analysis and concerns. After noting that the current price cap rules were not designed to address discrimination,<sup>5</sup> WilTel explained that new technology in the local network has a high degree of common costs and minimal variable costs.<sup>6</sup> This combination creates substantial opportunity to allocate common costs in a discriminatory fashion -- and with expiration of the equal charge rule, the LECs have both the ability and the incentive to do so unless constrained by regulation.<sup>7</sup> WilTel therefore asked the Commission to require uniform recovery of overhead, use excess earnings to correct discrimination in existing rates, implement an indexing mechanism to assure rate relationships remain reasonable, and direct that rates for "new" services be based on forward-looking costs with uniform overhead loadings.<sup>8</sup>

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<sup>4</sup> Id. at 14-15.

<sup>5</sup> WilTel at 2.

<sup>6</sup> Id. at 13.

<sup>7</sup> Id. at 12-13. See also Sprint at 10 (footnote omitted):

[A]llowing the LECs to implement volume or non-uniform term discounts which do not reflect cost relationships and which discriminate against IXCs based on their size is likely to have a serious detrimental impact on the interexchange marketplace, and thus should be avoided.

<sup>8</sup> Id. at 16, 27.

CompTel supports each of these measures. It is not enough for the Commission to assure that the productivity factor, baskets and bands, low-end adjustment mechanism, sharing threshold, and treatment of exogenous costs produce reasonable rates in the abstract.<sup>9</sup> For end users to benefit from price cap regulation, the Commission must additionally preclude the LECs from discriminating in providing access services to long distance carriers.

II. THERE IS NO BASIS FOR GRANTING ADDITIONAL PRICING FLEXIBILITY TO THE LECs.

Alleging the existence of vigorous access competition, the LECs seek to use this review proceeding to achieve substantial deregulation. The general LEC position, as expressed by USTA, includes elimination of the sharing and low-end adjustment mechanisms, expanded authority to introduce "new" services, and implementation of USTA's "market-area based" access reform plan.<sup>10</sup> While most LECs support those recommendations, some believe that even USTA's plan does not go far enough.<sup>11</sup>

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<sup>9</sup> Of course, as WilTel explains, unjustly high rates magnify the potential for discrimination. WilTel at 24.

<sup>10</sup> See generally Comments of USTA.

<sup>11</sup> See Ameritech at 10 (proposing even less burdensome standards for establishing Transitional and Competitive Market Areas); Bell Atlantic at 21-27 (proposing to remove DS1, DS3, discretionary, and new services from price cap regulation, to allow price decreases on one day's notice as  
(continued...)

CompTel already has demonstrated that the USTA plan is a "call for unwarranted and destructive deregulation, in advance of the development of realistic access alternatives and without regard for the deleterious impact on long distance competition and consumers."<sup>12</sup> For a full discussion of the infirmities of that plan, CompTel refers the Commission to its Opposition in RM-8356.<sup>13</sup> It bears repeating here, however, that the plan rests on a series of indefensible assumptions. Specifically, USTA fails to recognize that true switched access competition cannot develop without opening the local market to competition, that further deregulation is not necessary to allow the LECs to compete, that switched access competition will not benefit consumers unless discrimination is controlled, and, most fundamentally, that there is no competition for the vast majority of LEC access services in the vast majority of locations.

Indeed, this last point warrants particular emphasis. Less than three weeks ago, the D.C. Circuit -- at the behest

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<sup>11</sup>(...continued)  
long as they are above incremental cost, and to extend streamlined treatment to rate increases of 7 percent or less); Pacific Bell at 26 (proposing to eliminate the banding requirements altogether).

<sup>12</sup> Opposition of CompTel, RM-8356, filed Nov. 1, 1993, at 1.

<sup>13</sup> CompTel hereby incorporates this Opposition by reference.

of the LECs -- threw out the physical collocation requirement that is the cornerstone of the Commission's efforts to promote transport competition.<sup>14</sup> Even with this requirement in place (albeit briefly), the record shows that the LECs continue to control more than 99 percent of the access market.<sup>15</sup> Without the physical collocation requirement, the prospects for additional transport competition are dim. And, as CompTel previously has emphasized, the expanded interconnection initiatives -- had they been affirmed -- would have done nothing to foster competition for non-transport access services.

This is not the stuff of which deregulatory dreams are made. The Commission should resist calls for premature deregulation, which would benefit only the LECs and their shareholders. Instead, it should develop non-discrimination safeguards, which will benefit consumers.

### III. CONCLUSION

The Commission should modify the price cap plan to forestall discrimination in the access marketplace. By requiring reasonable rate relationships between services and non-discriminatory, cost-based rates for individual

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<sup>14</sup> Bell Atlantic v. FCC, No. 92-1619 (D.C.Cir. June 10, 1994).

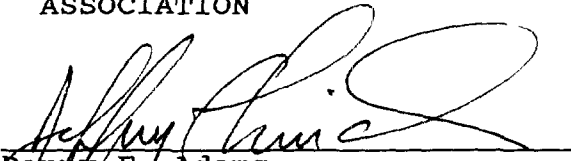
<sup>15</sup> See, e.g., AT&T at 7-8; MCI at 16; Ad Hoc Telecommunications Users Committee, Attachment A, at 101.

offerings, the Commission can assure that the fundamental price cap goals of efficiency, innovation, and economic growth are realized.

Respectfully submitted,

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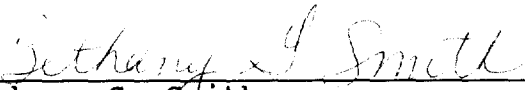
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